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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/086,253
Filing Date: March 01, 2002
Appellant(s): RINCAVAGE ET AL.

Eric A. LaMorte
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 14 March 2008 appealing from the Office action mailed 18 October 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2004/0107117	Denny	6-2004
2003/0074225	Borsand et al.	4-2003
2001/0047281	Keresman, III et al.	11-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

[2] Claims 1-6, 8-9, and 12-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Denny (United States Patent Application Publication #2004/0107117) in view of Borsand et al. (United States Patent Application Publication #2003/0074225).

As per claim 1, Denny teaches a method of analyzing changes made to a medical prescription by a pharmacist that fills said medical prescription, said method comprising the steps of: providing a database (Denny; paragraph [0064]); entering unfilled prescription data into said database (Denny; paragraph [0060]), wherein said unfilled prescription data corresponds to a prescription that had been prescribed by a physician to a particular patient (Denny; paragraphs [0010] [0027] [0030] [0031]), and wherein said unfilled prescription data contains information regarding a recommended pharmaceutical type and a recommended quantity prescribed in said prescription (Denny; paragraph [0031]); retrieving said unfilled prescription data from said database by a pharmacist selected by said particular patient to fill said prescription (Denny; paragraphs [0011] [0012] [0032] [0035] [0036] [0064]); having the pharmacist fill said prescription utilizing said unfilled prescription data and present a filled prescription to said particular patient (Denny; paragraphs [0035] [0036] [0049] [0063] [0064]), wherein said filled prescription contains a presented pharmaceutical type in a presented quantity (Denny; paragraphs [0031] [0032] [0036] [0049] [0063] [0064]); entering filled prescription data into said database (Denny; paragraphs [0035] [0041]), comparing said filled prescription data with said unfilled prescription data (Denny; paragraph [0053]); and generating a warning if said filled prescription data does not match said unfilled prescription data, wherein said warning is forwarded to said physician who initial wrote said prescription (Denny; paragraph [0053]).

While Denny provides for the pharmacist inputting information representative or indicative of a prescription to be filled (Denny; paragraph [0035]) and subsequently provides for the pharmacist inputting a code indicating that a prescription has been filled into the host system (Denny; paragraph [0041]), Denny fails to specifically indicate that the pharmacist enters filled prescription data that includes pharmaceutical type, quantity, cost or other information.

However, as is evidenced by Borsand et al., it is well known in the prescription fulfillment art for the pharmacist to record or enter into a database, information regarding the specifics of a filled prescription including cost, drug type, and quantity administered to the patient. Accordingly, Borsand et al. teach a method wherein said filled prescription data includes information for said presented pharmaceutical type and said presented quantity (Borsand et al.; paragraphs [0005] [0040] [0056] [0064] [0086] [0118]).

As per the 18 October 2007 amendment, Applicant amended claim 1 with regard to the "entering filled prescription data..." step to further specify "..entering filled prescription data into said database should said presented pharmaceutical type or said presented quantity vary in any manner from said recommended pharmaceutical type or said recommended quantity stated in said prescription wherein said filled prescription information includes information for said presented pharmaceutical type and said presented quantity actually present in said filled prescription;"

As per these elements, Borsand et al. disclose the electronic representation of a filled prescription is generated in a substantially simultaneous manner with the filling of the prescription and the distribution of the prescribed pharmaceutical (Borsand et al.; paragraph [0084]). Borsand et al. additionally disclose that during prescription fulfillment at the pharmacy, the prescription is re-evaluated in terms of reimbursement rules and medical appropriateness and that if for any appropriate business or medical reason the filling of a prescription should not occur, the pharmacist can cancel or potentially even modify the prescription as appropriate (Borsand et al.; paragraph [0087]). Borsand et al. further disclose that the pharmaceutical type and quantity are entered into the system as a matter of protocol during the generation of the prescription by a physician (Borsand et al.; paragraph [0064]). While Borsand et al. fail to redundantly consider the entry of quantity and type by the pharmacist during an "appropriate" modification of the prescription, Examiner submits that it is reasonable to assume these steps are repeated by the pharmacist making changes to the prescription. Examiner further submits that the noted assumption is justified in view of the objectives of the Borsand et al., which include the desire to "prevent a pharmacist from filling a prescription at half the strength but twice the volume and cost" (Borsand et al.; paragraphs [0005] [0082]). In view of the above noted teachings, Examiner submits that the collective teachings of Borsand et al. inherently include the entry of the pharmaceutical type and quantity actually dispensed by the pharmacist.

As per the 18 October 2007 amendment, Applicant has further amended claim 1 with regard to the "comparing" step to specify"...analyzing said filled prescription data to determine if

differences between said filled prescription data and said unfilled prescription data are justifiable;"

As per this element, by the rationale applied above, Examiner submits that the same data entry and review process occurs with regard to pharmacist proposed changes or modifications to a prescription as occur with regard to initial prescriptions. Accordingly, Borsand et al. disclose analyzing the filled prescription data to determine if changes are justified.

As per the 18 October 2007 amendment, Applicant has further amended claim 1 with regard to the "warning" step to include ..."generating a warning if differences between said filled prescription data and said unfilled prescription data are unjustifiable,..."

As per this element, Examiner maintains that the "signal" transmitted to the healthcare provider system in the event that prescription information entered into the database at the pharmacy system does not match the prescription information stored in the database (previously entered by the provider) constitutes "generating a warning if differences between said filled prescription data and said unfilled prescription data are unjustifiable" under the broadest reasonable interpretation of the amended claim language.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the teachings of Denny with those of Borsand et al. Such combination would have resulted in a system and method that enabled the entry of prescription information including

prescribed drug and dosage level prescribed to a patient, by a physician, into a host system (Denny; Abstract). Such a method/system would have further provided for the retrieval of the prescribed drug and dosage level information from the host system, by a pharmacist, for the purpose of filling the prescription for the patient (Denny; Abstract). Additionally, such a system/method would have enabled the pharmacist to enter information indicating that the prescription had been filled into the host system for the review of the prescribing physician (Denny; paragraphs [0035] [0041] [0053]). Lastly, such a method would have been enabled by a integrated system in which the payor, PBM, pharmacy, and provider access and manipulate the same information, including prescribed drug, quantity/dosage, refills, cost, and reimbursement rules (Borsand et al.; paragraphs [0040] [0064]). The motivation to combine the teachings would have been to enable a provider to monitor the filling of a prescription such that the prescription can be cancelled in the event of fraud, abuse, or mistakes, such as a pharmacist filling a prescription at half strength but twice the volume and cost (Borsand et al.; paragraphs [0005] [0120]).

As per claim 2, Denny teaches a method wherein said step of entering unfilled prescription data includes the substeps of: having a physician access said database (Denny; paragraphs [0010] [0031]); authenticating the identity of said physician (Denny; paragraph [0043]); and having said physician enter said unfilled prescription data into said database (Denny; Abstract and paragraph [0031]).

As per claim 3, Denny teaches a method wherein said step of retrieving said unfilled prescription data from said database includes the substeps of: having said medical professional access said database (Denny; paragraphs [0035] [0036]); authenticating the identify of said pharmacist (Denny; paragraph [0043]); and providing said pharmacist with said unfilled prescription data through said database (Denny; paragraphs [0035] [0036]).

As per claim 4, Denny teaches a method further including the step of registering physicians authorized to access said database (Denny; paragraphs [0027] [0029] [0043] [0047]).

As per claim 5, Denny teaches a method further including the step of registering pharmacists authorized to access said database (Denny; paragraphs [0027] [0029] [0043] [0047]).

As per claim 6, Denny teaches a method wherein said step of entering filled prescription data further includes entering information regarding pharmaceutical brand, and pharmaceutical cost (Borsand et al.; paragraphs [0040] [0056] [0066] [0070] and Fig. 1).

Claim 7 has been cancelled.

As per claim 8, Borsand et al. teach a method wherein said step of generating a warning includes providing a warning to an insurance company that said pharmacist failed to properly fill said prescription (Borsand et al.; paragraphs [0005] [0034] [0120]-[0122] and Fig. 11).

NOTE: Borsand et al. provide a system and method that supports tracking pharmaceutical, prescription, and related information throughout the life cycle of the pharmaceutical or prescription (Borsand et al.; paragraph [0034]). Borsand et al. further specify that information tracking can be in a proactive and real-time manner (Borsand et al.; paragraph [0034]). Borsand et al. further teach that a purpose of proactive and real-time tracking of information is to identify instances of fraud or error, such as a pharmacist filling a prescription at half strength and half strength and twice the volume and cost (Borsand et al.; paragraph [0005]). Examiner's interpretation of the above noted teachings of Borsand et al. constitute a "warning" mechanism indicating that a pharmacist has failed to fill a prescription properly.

As per claim 9, Denny teaches a method wherein said database is maintained at a central facility and said database is accessed by said physician and said pharmacist by a telecommunications link (Denny; Abstract paragraphs [0023] [0039] [0041]).

Regarding claims 2-6 and 8-9, the obviousness and motivation to combine as discussed with regard to claim 1 above are applicable to claims 2-6 and 8-9 and are herein incorporated by reference.

As per claim 12, Denny teaches a method of verifying changes made by a pharmacist to medical prescriptions to reduce fraud and mistake in the filling of medical prescriptions, said method comprising the steps of: entering unfilled prescription data into a secure database, wherein said unfilled prescription data corresponds to a patient's unfilled prescription for at least one

pharmaceutical (Denny; paragraphs [0010] [0027] [0030] [0031]); retrieving said unfilled prescription data from said database at a pharmacy (Denny; paragraphs [0011][0012][0032][0035][0036][0064]); having a pharmacist at said pharmacy provide volume of said at least one pharmaceutical as directed by said unfilled prescription data (Denny; paragraphs [0035] [0036] [0049] [0063] [0064]); entering filled prescription data into said database (Denny; paragraphs [0035] [0041]); comparing said filled prescription data to said to said unfilled prescription data (Denny; paragraph [0053]); and generating a warning if said unfilled prescription data and said unfilled prescription data differ (Denny; paragraph [0053]).

While Denny provides for the pharmacist inputting information representative or indicative of a prescription to be filled (Denny; paragraph [0035]) and subsequently provides for the pharmacist inputting a code indicating that a prescription has been filled into the host system (Denny; paragraph [0041]), Denny fails to specifically indicate that the pharmacist enters filled prescription data that includes pharmaceutical type, quantity, cost or other information.

However, as is evidenced by Borsand et al., it is well known in the prescription fulfillment fields for the pharmacist to record or enter into a database, information regarding the specifics of a filled prescription including cost, drug type, and quantity (i.e., volume) administered to the patient. Accordingly, Borsand teaches a method wherein said filled prescription data identifies, said at least one pharmaceutical and said volume provided by said pharmacist (Borsand et al.; paragraphs [0040] [0056] [0066] [0070] and Fig. 1).

As per the 18 October 2007 amendment, Applicant has further amended claim 12 with regard to the pharmacist provision of "volume...as directed" step to specify "...having a pharmacist at said pharmacy fill said unfilled prescription, wherein said pharmacist exercises discretion to alter said prescription so that the filled prescription varies from said unfilled prescription data;"

As per the 18 October 2007 amendment, Applicant has additionally amended claim 12 with regard to the "entering filled prescription data..." step to further specify that the entered "volume" data is "...volume actually provided by said pharmacist as said filled prescription;"

As per the 18 October 2007 amendment, Applicant has further amended claim 12 with regard to the "comparing..." step to specify that "comparing said filled prescription data to said unfilled prescription data to identify discretion exercised by said pharmacist;"

As per these elements, Borsand et al. disclose the electronic representation of a filled prescription is generated in a substantially simultaneous manner with the filling of the prescription and the distribution of the prescribed pharmaceutical (Borsand et al.; paragraph [0084]). Borsand et al. additionally disclose that during prescription fulfillment at the pharmacy, the prescription is re-evaluated in terms of reimbursement rules and medical appropriateness and that if for any appropriate business or medical reason the filling of a prescription should not occur, the pharmacist can cancel or potentially even modify the prescription as appropriate (Borsand et al.; paragraph [0087]). Borsand et al. further disclose that the pharmaceutical type and quantity are entered into the system as a matter of protocol during the generation of the prescription by a

physician (Borsand et al.; paragraph [0064]). While Borsand et al. fail to redundantly consider the entry of quantity and type by the pharmacist during a modification of the prescription, Examiner submits that it is reasonable to assume these steps are repeated upon the pharmacist making changes to the prescription. Examiner further submits that the noted assumption is justified in view of the objectives of the Borsand et al., which include the desire to "prevent a pharmacist from filling a prescription at half the strength but twice the volume and cost" (Borsand et al.; paragraphs [0005] [0082]). Examiner submits that the data entry, prescription modification, and prescription review on the basis of compliance with reimbursement rules and medical appropriateness encompass Applicant's above amended steps directed to the entry of filled data and a determination of justified or unjustified discretion exercised by the pharmacist.

As per the 18 October 2007 amendment, Applicant has further amended claim 12 with regard to the "generating a warning" step to include "generating a warning if said discretion exercised by said pharmacist is unjustified".

As per this element, Borsand et al. disclose the modification of a prescription, as appropriate, by a pharmacist at the time of filling (Borsand et al.; paragraph [0087]). Examiner reiterates and maintains for the reasons set forth above that modifications made by a pharmacist would be subject to the same re-evaluation of the prescription in terms of reimbursement rules and medical appropriateness. Examiner submits that this re-evaluation constitutes a determination as to whether the discretion exercised by the pharmacist is unjustified. Further, the pharmacist would be informed of an inappropriate modification, as is the case upon filling a prescription as written.

Examiner submits that the determination of "If for any appropriate business or medical reason the filling of a prescription should not occur." constitutes a warning that the discretion is unjustified (Borsand et al.; paragraph [0087]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the teachings of Denny with those of Borsand et al. Such combination would have resulted in a system and method that enabled the entry of prescription information including prescribed drug and dosage level prescribed to a patient, by a physician, into a host system (Denny; Abstract). Such a method/system would have further provided for the retrieval of the prescribed drug and dosage level information from the host system, by a pharmacist, for the purpose of filling the prescription for the patient (Denny; Abstract). Additionally, such a system/method would have enabled the pharmacist to enter information indicating that the prescription had been filled into the host system for the review of the prescribing physician (Denny; paragraphs [0035] [0041] [0053]). Lastly, such a method would have been enabled by a integrated system in which the payor, PBM, pharmacy, and provider access and manipulate the same information, including prescribed drug, quantity/dosage, refills, cost, and reimbursement rules (Borsand et al.; paragraphs [0040] [0064]). The motivation to combine the teachings would have been to enable a provider to monitor the filling of a prescription such that the prescription can be cancelled in the event of fraud, abuse, or mistakes, such as a pharmacist filling a prescription at half strength but twice the volume and cost (Borsand et al.; paragraphs [0005] [0120]).

As per claim 13, Denny teaches a method wherein said step of entering unfilled prescription data includes the substeps of : having a physician access said database (Denny; paragraphs [0010][0031]); authenticating the identity of said physician (Denny; paragraph [0043]); and having said physician enter said unfilled prescription data into said database (Denny; Abstract and paragraph [0031]).

As per (previously presented) claim 14, Denny teaches a method wherein said step of retrieving said unfilled prescription data from said database includes the substeps of: having said pharmacist access said database (Denny; paragraphs [0035][0036]); authenticating the identity of said pharmacist (Denny; paragraph [0043]); and providing said pharmacist with said unfilled prescription data through said database (Denny; paragraphs [0035][0036]).

As per claim 15, Denny teaches a method further including the step of registering physicians authorized to access said database (Denny; paragraphs [0027] [0029] [0043] [0047]).

As per claim 16, Denny teaches a method further including the step of registering pharmacists authorized to access said database (Denny; paragraphs [0027] [0029] [0043] [0047]).

As per (currently amended) claim 17, Borsand et al. teach a method wherein the step of generating a warning includes providing a warning to said physician (Borsand et al.; paragraphs [0005] [0056] [0086] [0118] [0120]-[0122] *see analysis claim 8).

As per (previously presented) claim 18, Borsand et al. teach a method wherein said step of generating a warning includes providing a warning to an insurance company (Borsand et al.; paragraphs [0005] [0034] [0120]-[0122] and Fig. 11 *see analysis claim 8).

Regarding claims 13-18, the obviousness and motivation to combine as discussed with regard to claim 12 above are applicable to claims 13-18 and are herein incorporated by reference.

[4] Claims 10-11 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Denny and Borsand et al. as applied to claims 1 and 12 above, and further in view of Keresman, III et al. (United States Patent Application Publication #2001/0047281).

Regarding claims 10-11 and 19-20, while Denny teaches authenticating and identifying provider and pharmacist systems accessing the host system (Denny; paragraph [0043]), Denny fails to specifically teach biometric identification as part of the security protocol.

However, as evidenced by Keresman, III et al., the use of biometric identification of registered doctors, pharmacies, and other participants is well known in the prescription drug fulfillment art (Keresman III et al.; paragraphs [0008] [0009] [0015] [0050] [0056]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the teachings of Denny and Borsand et al., as applied to claim 1 and 12 above, with those of Keresman, III et al. with the intention of determining that the requesting system is a

valid system by using password protection or other security methods known in the art (Denny; paragraph [0043]). The motivation to combine the teachings would have been to employ a well-known security protocol to provide a suitable degree of security, which prevents unauthorized access to a patient's confidential medical and pharmaceutical records (Keresman, III et al.; paragraph [0004]).

(10) Response to Argument

In the Appeal Brief filed 14 March 2008, Appellant makes the following arguments:

(A) The Denny reference fails to disclose entering any form of information regarding how a pharmacist may have changed the prescription.

(B) Neither Denny nor Borsand disclose analyzing the pharmacists change to see if it is justifiable discretion or an unjustifiable mistake.

(C) The Borsand reference fails to a database where a pharmacist enters changes in a prescription caused by the use of the pharmacist's discretion.

(D) Neither Borsand nor Denny disclose the creation of a warning if the changes made by a pharmacist were unjustified.

Examiner will address the Appellant's arguments in sequence as they appear in the Brief.

Argument (A):

In response to Appellant's first argument that the Denny reference fails to disclose entering any form of information regarding how a pharmacist may have changed the prescription, Examiner notes that the this limitation was addressed by the Examiner as rejected in view of the combined teachings of Denny and Borsand.

Specifically, while Denny provides for the pharmacist inputting information representative or indicative of a prescription to be filled (Denny; paragraph [0035]) and subsequently provides for the pharmacist inputting a code indicating that a prescription has been filled into the host system (Denny; paragraph [0041]), Denny fails to specifically indicate that the pharmacist enters filled prescription data that includes pharmaceutical type, quantity, cost or other information.

However, as is evidenced by Borsand et al., it is well known in the prescription fulfillment art for the pharmacist to record or enter into a database, information regarding the specifics of a filled prescription including cost, drug type, and quantity administered to the patient. Accordingly, Borsand et al. teach a method wherein said filled prescription data includes information for said presented pharmaceutical type and said presented quantity (Borsand et al.; paragraphs [0005] [0040] [0056] [0064] [0086] [0118]).

More specifically, Borsand et al. disclose the electronic representation of a filled prescription is generated in a substantially simultaneous manner with the filling of the prescription and the distribution of the prescribed pharmaceutical (Borsand et al.; paragraph [0084]). Borsand et al. additionally disclose that during prescription fulfillment at the pharmacy, the prescription is re-evaluated in terms of reimbursement rules and medical appropriateness and that if for any appropriate business or medical reason the filling of a prescription should not occur, the pharmacist can cancel or potentially even modify the prescription as appropriate (Borsand et al.; paragraph [0087]). Borsand et al. further disclose that the pharmaceutical type and quantity are entered into the system as a matter of protocol during the generation of the prescription by a physician (Borsand et al.; paragraph [0064]). While Borsand et al. fail to redundantly consider the entry of quantity and type by the pharmacist during an "appropriate" modification of the prescription, Examiner submits that it is reasonable to assume these steps are repeated by the pharmacist making changes to the prescription. Examiner further submits that the noted assumption is justified in view of the objectives of the Borsand et al., which include the desire to "prevent a pharmacist from filling a prescription at half the strength but twice the volume and cost" (Borsand et al.; paragraphs [0005] [0082]). In view of the above noted teachings, Examiner submits that the collective teachings of Borsand et al. include the entry of the pharmaceutical type and quantity actually dispensed by the pharmacist, i.e., "analyzing changes in the prescription that are made by the pharmacist.

Arguments (B) and (C):

In response to Appellant's second and third arguments that neither Denny nor Borsand disclose analyzing the pharmacists change to see if it is justifiable discretion or an unjustifiable mistake and further that Borsand fails to disclose entry of pharmacist's changes into a database, Examiner reiterates the data pathways prescription filling process as noted above with regard to Appellant's first argument.

Specifically, Examiner's position is based on the following:

1. An electronic representation of a filled prescription is generated in a substantially simultaneous manner with the filling of the prescription and the distribution of the prescribed pharmaceutical (Borsand et al.; paragraph [0084]).

2. Re-evaluation of the prescription at the pharmacy with regard to reimbursement rules and medical appropriateness further including a provision that, if for any appropriate business or medical reason the filling of a prescription should not occur, the pharmacist can cancel or potentially even modify the prescription as appropriate (Borsand et al.; paragraph [0087]).

3. Entry of the pharmaceutical type and quantity (subject to the re-evaluation noted above to occur at the pharmacy) into the system as a matter of protocol during the generation of the prescription by a physician (Borsand et al.; paragraph [0064]).

4. Examiner's submission that it is reasonable to assume that, while not redundantly recited in the Borsand disclosure, the steps are repeated upon the pharmacist making changes to the prescription. Examiner further submits that the noted assumption is justified in view of the objectives of the Borsand et al., which include the desire to "prevent a pharmacist from filling a prescription at half the strength but twice the volume and cost" (Borsand et al.; paragraphs [0005] [0082]). Examiner submits that the data entry, prescription modification, and prescription review on the basis of compliance with reimbursement rules and medical appropriateness encompass Applicant's limitations directed to the entry of filled data and a determination of justified or unjustified discretion exercised by the pharmacist.

Arguments (D):

In response to Appellant's fourth argument, Appellant correctly notes that Examiner relies on the teachings of Denny and Borsand in addressing the limitation of generating a warning to the physician in the event of an unjustified modification.

Accordingly, Examiner notes that the applied teachings of Denny at paragraph [0053] states:

"Thereafter, the host system 12 determines whether or not the data received is valid based upon querying the prescription database by a step 228, as indicated by a line 230. Where the information received from the pharmacy system 16 corresponds to prescription information maintained in the host system

12 database, the process branches to a step 234, indicated by a line 232, and transmits a signal to the health care provider 14 or pharmacy system 16 indicating that the prescription information entered is valid. However, where the information received from the pharmacy system 16 does not correspond to prescription information maintained in the host system 12 database, the process branches to a step 238, as indicated by a line 236, and transmits a signal to the health care provider system 14 or pharmacy system 16 indicating that the prescription information entered is invalid."

Examiner maintains that the above noted teaching of Denny serves to disclose a general teaching of noting or determining a problem with a prescription and sending a "signal" (i.e., "warning") to the prescribing healthcare provider. Examiner acknowledges that the specific events or problems that would generate such a "signal" are not expanded upon by Denny other than to indicate that the check serves to determine validity of the prescription.

Examiner relies on Borsand et al. to provide an indication of what would commonly constitute a "problem" or invalid prescription in the prescription fulfillment art. Specifically, Borsand discloses a system and method that supports tracking pharmaceutical, prescription, and related information throughout the life cycle of the pharmaceutical or prescription (Borsand et al.; paragraph [0034]). Borsand et al. further specify that information tracking can be in a proactive and real-time manner (Borsand et al.; paragraph [0034]). Borsand et al. further teach that a purpose of proactive and real-time tracking of information is to identify instances of fraud or error, such as a pharmacist filling a prescription at half strength and half strength and twice the volume and cost (Borsand et al.; paragraph [0005]). Examiner's interpretation of the above noted

teachings of Borsand et al. constitute a "warning" mechanism indicating that a pharmacist has failed to fill a prescription properly.

In view of the combined teachings of Borsand and Denny, Examiner maintains that it is well know in the prescription fulfillment art to communicate issues or problems with an invalid prescription to a physician (Denny) and it is further well known to adopt real-time procedures to identify instances of fraud or error involving a pharmacist altering quantity and dosage unjustifiably (Borsand).

In view of the above, Examiner maintains that Denny when considered in view of Borsand discloses a warning to a physician upon identification of commonly known errors and fraud in the filling of a prescription, such as unjustifiable alterations of quantity and dosage.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

R. DAVID RINES

Examiner, Art Unit 3626

/Alexander Kalinowski/

Supervisory Patent Examiner, Art Unit 3691

Conferees:

/Robert Morgan/

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